

GENERAL PERMIT -- CONSTRUCTION ACTIVITY (DRAFT)
Maine Pollutant Discharge Elimination System (MPDES)

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PART I -- General Permit Coverage

A. General coverage of this permit. This general permit authorizes the direct discharge (point source discharge) of stormwater associated with construction activity to waters of the state other than groundwater, ~~or to a conveyance leading to such waters~~, provided that the discharge meets the requirements of this general permit and applicable provisions of Maine's waste discharge and water classification statutes and rules. This general permit also authorizes the direct discharge of stormwater from support activities. "Construction activity" is defined in Part II (page 2).

This general permit is effective ~~February 17, 2003~~ March 10, 2003, and authorization to discharge under this general permit expires July 1, 2004. This general permit applies in those parts of the State of Maine for which the Department has received delegated authority under the federal NPDES program. See Part V (page 9), for a list of specific limitations on coverage of this general permit.

B. Authority. A permit is required for the direct or indirect discharge of pollutants to waters of the State.¹ A general permit may be issued for point discharges (direct discharges) of stormwater.² A violation of a condition or requirement of a general permit constitutes a violation of Maine's water quality laws and the federal Clean Water Act, and subjects the discharger to penalties under 38 M.R.S.A. § 349, and § 309 of the Clean Water Act. Nothing in this general permit is intended to limit the Department's authority under the waste discharge and water classification statutes or rules. This general permit does not affect requirements under other applicable Maine statutes such as Site Location of Development (Site Law), Stormwater Management, Land Use Regulation Commission (LURC), and Natural Resources Protection (NRPA).

This general permit does not prevent a municipality from adopting stricter standards than contained in this general permit, or in state or federal law.

¹ See 38 M.R.S.A. § 413.

² See 06-096 CMR 529(2)(a)(2)(i).

PART II -- Definitions

The following terms have the following meanings when used in this general permit.

Note: Additional definitions are found in 06-096 CMR 520 and in the waste discharge and classification laws.

A. Construction activity. "Construction activity" or "activity" means:

1. Construction activity including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a common plan of development or sale, if the common plan of development or sale will ultimately disturb equal to or greater than one acre; or
2. Any other construction activity designated by the Department based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

Note: Based upon Maine's soils, topography, and extensive water resources, the Department has determined that the great majority of construction activities disturbing one acre or more will result in discernable concentrated flows (direct discharges) to waters of the state.

B. Common plan of development or sale. A "common plan of development or sale" means a subdivision as determined by the Land Use Regulation Commission (LURC), or a subdivision under municipal law as determined by the municipality where the subdivision is located.

C. Department. "Department" means the State of Maine Department of Environmental Protection.

D. Direct discharge. "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.³

E. Disturbed area. "Disturbed area" is clearing, grading and excavation.⁴ Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area". "Disturbed area" does not include routine maintenance of an impervious area within the footprint of that impervious area, but does include redevelopment. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility.

F. Impaired waterbody (C). An "impaired waterbody" means a waterbody that is not attaining water quality criteria or standards, as determined by the Department. If a construction activity may cause or contribute to the impairment of a waterbody, the Department includes the waterbody on a sub-list referred to as the "Construction General Permit List". If a waterbody is included on the list, it is referred to as an "impaired waterbody (C)."

³ 38 MRSA § 466(5) (definition of "direct discharge") and 06-096 CMR 520 (definition of "point source").

⁴ See 06-096 CMR 521(9)(b)(14)(x) and 40 CFR 122.26(b)(15).

- 1. Construction General Permit List.** The list of the impaired waterbodies (C) ~~is determined by the Department and is available in hardcopy and on the web at:~~ is in Appendix D.

~~<http://www.state.me.us/dep/blwq/doestand/stormwater/construction.htm>~~

~~This annually updated list is made available for public comment prior to becoming effective.~~

- 2. Best currently available data.** The Department may use the best currently available data to determine the status of a waterbody, rather than relying upon the Construction General Permit List, when the activity itself may have caused or contributed to the impairment, or when the Department reviews an application for a permit such as an individual Waste Discharge or Site Law permit.
- G. Notice of Intent ("NOI").** "Notice of Intent or "NOI" means a notification of intent to seek coverage under this general permit made by the applicant to the Department on a form provided by the Department.
- H. Notice of Termination ("NOT").** "Notice of Termination" or "NOT" means a notification of intent to end coverage under this general permit on a form provided by the Department.
- I. Person.** An individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.⁵
- J. Stormwater.** "Stormwater" means storm water runoff, snow melt runoff, and surface runoff and drainage. "Stormwater" has the same meaning as "storm water".
- K. Support activities.** "Support activities" means support activities associated with a construction activity (e.g. concrete or asphalt batch plants, equipment storage yards, material storage areas, excavated material disposal areas, borrow areas) provided the following requirements are met.
- 1. Direct relationship.** The support activity is directly related to a construction site that is required to have waste discharge permit coverage for discharges of storm water associated with construction activity.
 - 2. Type of operation.** The support activity is not a commercial operation serving multiple unrelated construction projects by different persons, and does not operate beyond the completion of the construction activity at the last construction project it supports.

PART III -- Requirements

Part III describes the requirements for obtaining authorization under this general permit. See Part IV for general submission requirements and procedures related to Notices of Intent (NOIs) and Notices of Termination (NOTs).

A person may not construct or cause to be constructed or operate or cause to be operated or, in the case of a common plan of development or sale (subdivision), sell or lease, offer for sale or lease or cause to be sold or leased any area affected by construction activity without obtaining approval from the Department. A person having an interest in or undertaking an activity on a parcel of land affected by this general permit may not act contrary to this general permit.

⁵ See 38 M.R.S.A. § 361-A(4).

If a project comes under both (A) and (B) below, only one NOI is required.

A. Construction activity (other than a common plan of development or sale). Construction activity including one acre or more of disturbed area on the parcel, or other construction activity designated by the Department, must meet the following requirements.

1. Development requiring review pursuant to the Site Law. If the development requires a Site Law permit, the following applies.

- a. Submit NOI and NOT.
- b. Meet the standards in Appendices A-C of this general permit.
- c. Erosion and sedimentation control (ESC) plan development and maintenance. An ESC plan is a plan that demonstrates how the standards in Appendix A will be met. An ESC plan is required pursuant to the Site Law, and additional requirements may apply pursuant to the Site Law. It is not necessary to submit a separate ESC plan with the NOI. See Part III (D) concerning referencing a plan submitted as part of a Site Law application.
- d.

~~Note: An erosion and sedimentation control plan is required as part of the Site Law application.~~

2. Other projects. For other construction activities, the following applies.

- a. Submit NOI and NOT.
- b. Meet the standards specified in Appendices A-C of this general permit.
- c. Erosion and sedimentation control (ESC) plan development and maintenance. An ESC plan is a plan that demonstrates how the standards in Appendix A will be met. See Part III(D) concerning referencing a plan submitted as part of a Stormwater Management application.
 - (i) If the project includes 1 acre or more of disturbed area and directly discharges to an impaired waterbody, develop and maintain an erosion and sedimentation control plan (ESC plan), and submit it to the Department for review.
 - (ii) If the project includes 3 or more acres of disturbed area and directly discharges to a waterbody that is not impaired, develop and maintain an ESC plan. Submit the plan to the Department for review with the NOI, unless the plan is signed by one of the persons listed below certifying that the plan meets the standards of this general permit.
 - A person certified in erosion control practices by the Maine Nonpoint Source Training and Resource Center.
 - A person certified as a “professional in erosion and sedimentation control” under the CPESC program.
 - A Maine registered professional engineer who by education, training, or experience is knowledgeable in stormwater management and erosion and sedimentation control.
 - Soil and Water Conservation District staff person trained to develop erosion and sedimentation control plans, working in an office with which the Department has an agreement concerning review of these plans.

B. Common plan of development or sale. A common plan of development or sale must meet the following requirements.

1. Site Law, Stormwater, or LURC. A common plan of development or sale is considered to meet the requirements of this general permit if:

- a. A Site Law, Stormwater (38 M.R.S.A. § 420-D), or LURC permit is required ~~obtained~~, and the requirements of Part III (A)(2) are met; and
- b. If a Stormwater permit is required, the requirements of Part III(A)(2) are also met on all associated lots in the subdivision, as determined by the Department.

An ESC plan is required if the common plan of development or sale drains to an impaired waterbody (C) and a Site Law, Stormwater Management, or LURC permit is required for the project. An ESC plan is required if the common plan of development or sale does not drain to an impaired waterbody (C) but will result in 3 or more acres of total disturbed area, and a Site Law, Stormwater or LURC permit is required for the project. Total disturbed area includes expected disturbed area on lots as well as associated facilities such as roads, pads, and ponds. The department will assume that one acre of disturbed area will be created per 3 lots (1/3 ac. per lot), unless the person proposing the common plan of development or sale provides information concerning actual disturbed area.

- 2. Other.** If the project does not require a Site Law, Stormwater, or LURC permit, and is not located within an area subject to the jurisdiction of LURC, then the project must meet the standards of the Maine Erosion and Sedimentation Control Law. An NOI is not required.

A lot buyer or subsequent transferee within a common plan of development or sale must submit an individual NOI if he or she proposes a construction activity as defined at Part II (A), regardless of whether the developer has filed an NOI.

The standards apply to the lots in the subdivision as well as associated facilities such as roads, pads, and ponds.

Note: The LURC Development Law only applies to areas of the state administered by the Land Use Regulation Commission (LURC). The Maine Site Law (in regard to subdivisions), Erosion and Sedimentation Control Law, and Stormwater Management Law, apply to projects or portions of projects outside the jurisdiction of LURC.

- C. Total maximum daily load (TMDL).** If the waterbody to which a direct discharge drains is impaired and has an EPA approved TMDL, then the discharge must be consistent with any waste load allocation (WLA) contained in the TMDL and any implementation plan.

Note: based upon TMDLs approved by the federal Environmental Protection Agency prior to March 10, 2003, this subsection concerning TMDLs does not require a construction activity to meet additional requirements to those otherwise specified in this general permit. If additional requirements result from a TMDL or implementation plan on or after March 10, 2003, they will not apply to a construction activity eligible for coverage under this general permit until incorporated into this general permit. Such requirements would be incorporated upon reissuance of the general permit, or reopening of this subsection of the general permit. A general permit may be reopened as provided in 38 M.R.S.A. § 414-A.

- D. ESC plan.** Material submitted with an application for a Site Law or Stormwater Management Law permit may be referenced to the extent it substantively addresses the standards in Appendix A. If not all the standards are addressed, supplementary material must be provided with the NOI. If an applicant wishes the Department to rely in whole or part on a submission that is part of a Site Law or Stormwater Management Law application, the applicant should submit a letter with the NOI describing the previous submission and the extent to which it should be relied upon, and listing the standards addressed by any supplementary material.

PART IV. Procedure

A. Notice of Intent (NOI). When the applicant submits an NOI, he or she agrees to comply with the standards and requirements of this general permit. ~~The applicant shall provide a copy of the initial NOI form to the municipal office of the town or city in which the discharge will occur at the time it is submitted to the Department.~~ An NOI must be submitted to the Department with the appropriate fee.

1. Processing of NOI. An NOI must be reviewed and approved by the Department prior to beginning construction activity or causing soil disturbance.

The NOI is deemed approved 14 calendar days after the Department receives the application form, unless the Department approves the application sooner, or denies it, or notifies the applicant that he or she is ineligible for coverage under this general permit. If the DEP does not speak with or write to the applicant within this 14-day period regarding NOI, the application is deemed approved by the Department and the applicant may proceed to carry out the activity. ~~Exceptions are as follows:~~

- ~~a. If an erosion and sedimentation control plan is required (see Part III) and is submitted to the Department for review, the approval period is 30 calendar days from receipt of the NOI rather than 14 calendar days. If the Department does not approve or deny the application (with ESC plan) within the 30 day period, the application (with ESC plan) is deemed approved by the Department.~~
 - ~~b. Activities that are part of a larger project requiring~~ require a permit under the Site Location of Development or the Storm Water Management Acts may not proceed until any required permit under those laws is obtained. Any NOI and supplementary information required by this subsection should be submitted at the same time as any required Stormwater Management or Site Law application for the activity in order to avoid delays in processing. The NOI may not be filed before these applications. The Department may consolidate application materials with these or other programs. ~~See Part V(C).~~ When application materials are consolidated, the review period for the NOI is extended to coincide with the review period of the other program.
- 2. Submission.** A landowner or leasehold owner, or his or her authorized representative, must file the NOI using a form provided by the Department. The NOI must contain information specified by the Department including that listed in this subsection. The Department may require the submission of additional information as necessary. The NOI must be sent to the address indicated on the NOI form.
- a. The legal name, address, telephone number, and any email address of the landowner or leasehold owner.
 - b. The legal name, address, telephone number, and any email address of the agent or contractor.
 - c. A narrative describing in detail how to get to and access the parcel and construction activities, and a USGS or similar map with the location marked.
 - d. A narrative describing the project and its purpose.
 - e. UTM Northing and UTM Easting (if known)
 - f. The size of disturbed area proposed.
 - g. A scaled plan or drawing of the proposed activity (site plan). Identify retained downgradient buffers, or explain in a narrative why such buffers will not be retained (see Pollution Prevention standard, Appendix A(1)). Identify protected natural resources, such as wetlands, streams, or high water line of ponds or coastal wetlands on the site plan. It is not necessary to have the plan professionally prepared. However, it must be legible and drawn to a scale that allows clear representation of distances and measurements on the plan.

- h. An erosion and sedimentation control (ESC) plan if required to be submitted under Part III. If Part III allows certification as an alternative to submission of a plan, include a statement indicating that certification has been obtained and from whom.
- i. Name of the receiving water(s) or if the discharge is through a municipal separate storm sewer system, the name of the municipal operator of the storm sewer. ~~Indicate whether the discharge is to a waterbody with an approved TMDL.~~
- j. Signature of applicant (landowner or lessee) or authorized representative with documentation showing authorization. For signatory requirements, see 06-096 CMR 521(5).
- k. For any construction activity occurring within an essential habitat or that may violate protection guidelines, written approval of the activity from the Department of Inland Fisheries and Wildlife (IF&W). The applicant must follow any conditions stated in the IF&W approval.⁶

Note: Maps showing areas of essential habitat are available from the Department of Inland Fisheries and Wildlife regional headquarters, municipal offices, the Land Use Regulation Commission (or areas within LURC's jurisdiction) and DEP regional offices. If the activity is located in essential habitat, IF&W must be contacted to request and obtain a "certification of review and approval."

~~If the construction activity discharges directly to a waterbody that is determined by the Department to be impaired after authorization of the discharge, the Department may require the submission of an erosion and sedimentation control plan (ESC plan) to the Department for review and approval. The plan must address remaining construction activity (areas not yet permanently stabilized). The plan must be submitted within 30 days of notification to the permittee, as part of appropriate controls and implementation procedures to bring the discharge into compliance with this general permit. If the Department does not approve or deny the ESC plan within 30 days of when the plan is received, then the plan is deemed approved by the Department. This submission requirement does not apply if the permittee has already submitted an ESC plan to the Department and no substantial change in the activity has occurred.~~

B. Notice of Termination (NOT). The permittee shall submit a Notice of Termination (NOT) on a form provided by the Department within 20 days of the completion of permanent stabilization or coverage under an alternative MEPDES permit has been obtained. If the property is transferred and construction activity is ongoing, the permittee is not required to file an NOT if the new owner or lessee must file an NOI to continue authorization under this general permit for a continuing discharge.

1. Common plan of development or sale. A person who has filed an NOI for a common plan of development or sale shall file an NOT as follows. ~~after permanent stabilization has been completed. For individual lots in a subdivision, the developer may file the NOT:~~

a. For areas of the site over which the developer has control, the NOT must be filed Aafter permanent stabilization has been completed.~~;~~~~or~~

b. For areas of the site over which the developer does not have control (ex. lots sold in an undeveloped or partially undeveloped state), the NOT must be filed aAfter (i) temporary stabilization including perimeter controls for individual lots have been completed if the developer has done prep work (stripping or grading) on the lots, (ii) the developer has informed the lot buyers of the requirements of this general permit, and (iii) the developer has provided the buyers

⁶ A state agency may not license a project that will significantly alter habitat of any species designated as threatened or endangered, or violate protection guidelines, without a determination from IF&W. See 12 M.R.S.A. § 7755-A.

with copies of any erosion control plan, or portion of a plan applicable to the lots, required to be certified or provided to the Department under the requirements of this general permit.

A lot buyer within a common plan of development or sale is required to meet the standards of this general permit, except that residential lot buyers are not required to maintain inspection logs as provided in Appendix A(2).

2. **Timing.** A permittee's authorization to discharge under this permit terminates at midnight on the day the NOT is signed.
3. **Submission.** The NOT must include information specified by the Department, including the following:
 - a. The legal name, address, telephone number, and any email address of the landowner or leasehold owner.
 - b. The legal name, address, telephone number, and any email address of the agent or contractor.
 - c. Photographs showing the completed project and the affected area. Exception: a person filing an NOT for a common plan of development is not required to include photographs for disturbed areas created by lot buyers or lessees.
 - d. Signature of the permittee or authorized person together with documentation demonstrating authorization. If documentation has been previously submitted and is still current, it may be referenced.

C. Mail/copy. The notification forms must be sent to the DEP by certified mail (return receipt requested) or other service providing a record of DEP's receipt of the item to the sender, or hand delivered to the DEP and date stamped by the Department. The applicant must keep a copy of the notification forms and all materials provided to the Department.

D. Retention of records

1. **Documents.** The permittee shall retain copies of the ESC plan and any forms, submissions, reports, or other materials required by this general permit for a period of at least three years from the completion of permanent stabilization. This period may be extended by request of the Department.
2. **Accessibility.** Employees and agents of the Department may enter any property at reasonable hours in order to determine compliance.⁷ The permittee shall retain a copy of the ESC plan and this general permit at the construction site or other location accessible to the Department, local government officials, and any operator of a municipal separate stormwater sewer receiving discharges from the site, from project initiation to permanent stabilization. The permittee shall ensure that a copy of the ESC plan and this general permit are available for the use of any contractors on the site undertaking work regulated by this general permit.

E. Changes in the activity or owner/lessee. Coverage under this general permit will be continued provided there are no changes in the discharge as described in the NOI and associated submissions. If ~~minor~~ any changes are proposed in the activity, the person having filed the NOI must notify the Department through the submission of updated information in writing, including submitting or obtaining certification for any revisions to an ESC plan required in Part III.

⁷ See 38 M.R.S.A. § 347-C(in part).

The updated information must be submitted with a new NOI if the permittee ~~A person who~~ proposes to expand or relocate disturbed area of one acre or more beyond what was indicated in the original NOI, or to change the waterbody to which the stormwater will be discharged, ~~must submit a new NOI.~~ Information concerning other changes may be submitted in a letter.

If the owner or lessee of the land changes, the new owner or lessee must file an NOI if he or she wishes to continue coverage under this general permit. Materials submitted with an NOI by a prior owner or lessee may be referenced if they are still current. Exception: a lot buyer or subsequent transferee of a lot within a common plan of development or sale is not required to file an NOI unless he or she proposes a construction activity as defined in Part II(A). ~~a buyer or lessee of a lot in a subdivision reviewed as a common plan of development is not required to file an NOI unless his or her construction activity will include one acre or more of disturbed area.~~

F. Reissuance. Upon reissuance of this general permit by the Department, persons wishing to continue coverage for a discharge during a construction activity must notify the Department through submission of an NOI. The NOI may reference information in prior NOI submissions to the extent it is still current.

G. Request to be excluded. A person may request that an activity be excluded from coverage under this general permit and apply for an individual waste discharge permit pursuant to the Department's rules. When an individual permit is issued to a person otherwise subject to this general permit, the applicability of this general permit to that person is automatically terminated on the effective date of the individual permit.

H. Initial issuance of this general permit

1. Construction activity including one acre or more of disturbed area. This subsection applies for purposes of determining jurisdiction under the "one acre" threshold only.

a.1-Prior authorization under Phase I A person with on-going construction activity as ~~the effective date of this general permit March 10, 2003~~ who received authorization to discharge for the project under the prior federal Phase I Construction General Permit shall submit a notice of intent (NOI) prior to or on June 9, 2003. ~~within 90 days of the effective date of this permit.~~ ~~If the permittee is eligible to submit a Notice of Termination (NOT) before the 90th day, the permittee is not required to submit an NOI to the Department.~~ Until filing of the NOI or NOT, the person shall comply with the all requirements of the prior federal construction general permit.

An ongoing activity must submit an NOI as required in this general permit unless (i) it completes permanent stabilization prior to March 10, 2003; or (ii) it is eligible to submit a Notice of Termination (NOT) prior to or on June 9, 2003. If an NOI is required, the requirements of Part III must be met for areas that have not been permanently stabilized as of the date the NOI is approved by the Department.

b.2. Lack of prior authorization under Phase I. A person with on-going construction activity as of March 10, 2003 ~~the effective date of this general permit~~, who was required but did not obtain authorization required under the prior federal Phase I Construction General, shall be required to submit an NOI as provided in this general permit as of March 10, 2003.

c.3. Phase II construction activity. A person with an on-going construction activity as of the effective date of this general permit who was not required to obtain authorization under the

federal Phase I Construction General permit, but is required to obtain authorization under this general permit, shall submit an NOI by June 9, 2003 ~~April 17, 2003~~. This requirement applies without regard to whether the project will be completed prior to June 9, 2003.

An ongoing activity must submit an NOI as required in this general permit if one or more acres is cleared, graded or excavated so as to meet the definition of "disturbed area" (in Part II) on or after March 10, 2003.

3. Common plan of development or sale. This subsection applies for purposes of determining jurisdiction under the "common plan of development or sale" threshold only.

A common plan of development or sale (subdivision) is not required to meet the requirements of this general permit if it received approval from LURC or the municipality where it is located before March 10, 2003.

a. If a subdivision that received municipal or LURC approval prior to March 10, 2003 is modified on or after the effective date of this permit so as to add three or more subdivision lots as determined by LURC or the municipality, this general permit applies to those lots and their associated facilities as provided in Part III.

b. If a subdivision receives approval on or after March 10, 2003, then this general permit does not apply to lots transferred before March 10, 2003.

Note: The person subdividing the land must still file an NOI if he or she will undertake construction activity on the parcel that includes one or more acres of disturbed area, as provided in Part IV(H)(1) above, on or after March 10, 2003. Examples of such activity would be road or pad construction, or stripping and grading. A single NOI may be filed for both the common plan of development or sale and this disturbed area.

Note: A lot buyer or lessee who will undertake construction activity including one or more acre of disturbed area on or after March 10, 2003 must file an NOI, under Part IV(H)(1) above, without regard to whether municipal or LURC approval has been obtained for the subdivision containing the lot or when such approval occurred.

PART V -- Limitations on Coverage

A. Individual permit or other general permit. This general permit does not authorize a stormwater discharge associated with construction activity that requires an individual waste discharge permit or is required to obtain coverage under another waste discharge general permit. See Part VI(A) for information on related waste discharge permits.

The Department may require any person with a discharge authorized by this general permit to apply for and obtain an individual permit.⁸ When the DEP notifies an applicant that an individual permit is required, no work may be begun or continued unless and until the individual permit is obtained. Any interested person may petition the Department to take action under this paragraph. Examples of when an individual waste discharge permit may be required are specified in rule.⁹

⁸ See 06-096 CMR 529(2)(B)(3).

⁹ 06-096 CMR ~~529(2)(B)(3)(i)(A)-(G)~~ 529(2)(b)(3)

B. Compliance with this general permit. This general permit does not authorize a stormwater discharge that is not in compliance with the requirements of this general permit. If the Department determines that the standards of this general permit have not been met, the Department shall notify the person and may:

1. Authorize coverage under this general permit after appropriate controls and implementation procedures designed to bring the discharge into compliance with this general permit and water quality standards have been implemented as determined by the Department;
2. Require an individual waste discharge permit; or
3. Inform the person that the discharge is prohibited.

Compliance with this subparagraph does not preclude any enforcement activity under Maine law for an underlying violation.

C. Non-stormwater. This general permit does not authorize a discharge that is mixed with a source of non-stormwater, other than those discharges in compliance with Appendix C(6).

D. Total maximum daily load (TMDL). This general permit does not authorize a direct discharge that is inconsistent with any EPA approved TMDL for the waterbody to which the direct discharge drains as provided in Part III(C).

E. Discharge of hazardous substances, chemicals, or oil. This general permit does not authorize the discharge of hazardous substances, chemicals, or oil resulting from an on-site spill.

F. Violation of water quality standards. This general permit does not authorize a discharge that may cause or contribute to a violation of a water quality standard.

G. Related laws. This general permit does not authorize stormwater discharges that are not in conformance with the terms and conditions of permits issued under Site Location of, 38 M.R.S.A. §§ 481-490; Stormwater Management, 38 M.R.S.A. § 420-D; Natural Resources Protection, 38 M.R.S.A. §§ 480-A - 480-Z; or the Land Use Regulation Commission §§ 481 et. seq.. This general permit does not authorize stormwater discharges that are not in conformance with the Maine Erosion and Sedimentation Control Law, 38 M.R.S.A. § 420-C.

H. Post-construction discharges. This general permit does not authorize stormwater discharges after the completion of permanent stabilization.

J. Metallic mineral mining or advanced exploration. This general permit does not authorize discharges from metallic mineral mining or advanced exploration. Stormwater and erosion and sedimentation standards related to construction are specified in the Site Location of Development permit and LURC permit and, if required, an individual waste discharge permit.

K. Exemptions. Certain exemptions apply and are specified in the Maine Waste Discharge Law. An exemption in a Maine law other than the Maine Waste Discharge Law, such as the Site Law or Maine Stormwater Management Law, does not create an exemption to the Maine Waste Discharge Law or the requirements of this general permit. Each law has its own set of statutory exemptions.

L. Reopener. This general permit may be modified or reopened as provided in 38 M.R.S.A. § 414-A(5).

Part VI -- Relationship to other programs

An activity may include "construction activity" and also be regulated under other programs.

A. Related waste discharge permits

1. **Multi-sector.** A stormwater discharge requiring approval as an industrial activity other than 06-096 CMR 521(b)(14)(x) is not authorized under this general permit.
2. **Waste discharge permit (surface water).** A waste discharge permit may be required for activities such as combined sewer overflows (CSOs), spray irrigation, process water treatment systems, metallic mine drainage, and other discharges inadequately covered by this general permit, as determined by the Department.
3. **Waste discharge permit (groundwater).** A waste discharge permit may be required for the discharge of stormwater through any well or wells, including drywells and subsurface fluid distribution systems. For complete requirements, see 06-096 CMR 543.

A "subsurface fluid distribution system" is an assemblage of perforated pipes, drain tiles, or similar mechanisms intended to distribute fluids below the surface of the ground. A "well" is a bored, drilled, or driven shaft the depth of which is greater than the largest surface dimension, whether the shaft is typically dry or contains liquid; or a dug hole the depth of which is greater than the largest surface dimension; or a subsurface fluid distribution system. "Well injection" means the subsurface discharge of fluids into or through a well.

B. Quarry or an excavation for borrow, clay, topsoil, or silt. Clearing, grading or excavation activities conducted as part of the exploration and construction phase of a mineral mining operation must meet the requirements of this general permit, if they will result in the direct discharge of stormwater to waters of the state other than groundwater, will disturb one or more acres of land, and occur on or after March 10, 2003. These requirements do not apply to an area that is internally drained. Construction activity includes the building of site access roads and removal of overburden and waste rock to expose mineable materials. If the activity must meet the requirements of this general permit, the following exceptions apply.

1. **Stabilization deadlines.** The 14 day time limit for temporary stabilization in Appendix A(3), and the one-year time limit for permanent stabilization in Appendix A(5) do not apply.
2. **If under the Gravel Pit or Quarry Program -- may need to do an ESC plan.** If the clearing, grading, or excavation activity subject to this general permit is also required to meet the Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt,¹⁰ or Performance Standards for Quarries¹¹, then the operator does not have to meet the requirements specified in Part III of this general permit, except for the ESC plan requirements in Part III(A)(2).

In some cases, an area that is not internally drained initially may become internally drained during construction. For an area that has become internally drained, it is not necessary to undertake stabilization as otherwise required under this general permit before filing the NOT.

¹⁰ 38 M.R.S.A. §§ 490-A et. seq.

¹¹ 38 M.R.S.A. §§ 490-W et. seq.

- 1. Operations under the gravel pit and quarry laws.** ~~For excavations in areas of Maine that are subject to and in conformance with the standards and procedures under the Performance Standards for Excavations for Borrow, Clay, Topsoil, or Silt (38 M.R.S.A. §§ 490-A et. seq.) or Performance Standards for Quarries (38 M.R.S.A. §§ 490-A et. seq.), requirements in and adopted pursuant to those provisions apply in lieu of the requirements in this general permit, except that an ESC plan must be submitted with the notice required under § 490-C or § 490-Y, or the ESC plan must be certified, as provided in Part III(A)(2).~~

~~It is recommended but not required that an NOT be filed when the exploration phase clearing, grading and excavation activities are completed and active mining will ensue. If an NOT is not filed, the requirements of this general permit continue to apply.~~

~~Note: That portion of the operation that is internally drained is not regulated under this general permit.~~

- D. Other programs such as Site Law, Stormwater, and Waste.** The Department may combine application requirements for this general permit and other programs administered by the Department. Other programs may include facilities and projects regulated pursuant to programs such as 38 M.R.S.A. § 1310-N (Solid waste facility licenses), 1319-R (facility siting), 1319-X (criteria for development of waste oil facilities and biomedical facilities), 38 M.R.S.A. § 483-A (Site Location), 38 M.R.S.A. 420-C (Stormwater Management), and 12 M.R.S.A. § 685-A (LURC). In case of a conflict between the standards in Appendix A, B, and C and those adopted pursuant to any of these laws, the stricter standard applies, as determined by the Department. The review period for the NOI may be extended as provided in Part IV(A)(1)(b). The Department may waive the fee required with the NOI pursuant to this general permit for certain combined applications.
- L. Silvicultural activities.** Authorization under this general permit is not required for non-point silvicultural activities as provided in 06-096 CMR 521(10).
- F. Maine Department of Transportation.** Construction activities conducted by the Maine Department of Transportation (MDOT) or the Maine Turnpike Authority (MTA) pursuant to a Memorandum of Understanding between the Department, and MDOT and MTA, are authorized under this general permit within the limits of coverage specified in this general permit. MDOT and MTA are considered qualifying state programs as provided in 40 CFR 122.44(s).

PART VII -- Standard Conditions

- A. General restrictions.** A discharge covered by a General Permit may not:

1. Be to a body of water classified as Class GPA, AA, A or SA;¹²
2. Be to a body of water having a drainage area of less than 10 square miles;
3. Contain any pollutant, including toxic substances, in quantities or concentrations, which may cause or contribute to any adverse impact on the receiving water;

¹² This standard condition is required by 06-096 CMR 529(3), effective January 12, 2001. However, note that 38 M.R.S.A. 465-A(1)(C), 465(1)(C) allow discharge of stormwater to GPA, AA and SA waters if the discharge is in compliance with state and local requirements. For requirements applicable to discharges to Class A waters, see 38 M.R.S.A. 465(2)(C). The Department is ~~considering~~ proposing emergency legislation to allow certain stormwater discharges to Class A waters and to watersheds of less than 10 square miles. The statutory provisions control for purposes of this general permit.

4. Be to a receiving water which is not meeting its classification standard for any characteristic which may be affected by the discharge; or
 5. Impart color, taste, turbidity, radioactivity, settleable materials, floating substances or other properties that cause the receiving water to be unsuitable for the designated uses ascribed to its classification.
- B. Removed substances.** Pollutants removed or resulting from the treatment of wastewaters must be disposed of in a manner approved by the Department.
- C. Monitoring requirement.** The Department may require monitoring of an individual discharge as may be reasonably necessary in order to characterize the nature, volume or other attributes of that discharge or its sources.
- D. Other information.** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Department, he or she shall promptly submit such facts or information.
- E. Other applicable conditions.** The conditions in 06-096 CMR 523(2) also apply to discharges pursuant to this general permit¹³ and are incorporated herein as if fully set forth. These conditions address areas such as: duty to comply; need to reduce or halt activity not a defense; duty to mitigate; permit actions; property rights; duty to provide information; and inspection and entry.
- F. Duty to reapply.** If the permittee wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the permittee must apply for and obtain a new permit.
- G. Severability.** The conditions of this general permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

¹³ See 06-096 CMR 529(3)(i).